House Transportation and Infrastructure Committee

Railroads Subcommittee

Testimony of

United Transportation Union

James Stem

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Chairman LaTourette, Ranking Member Ms. Brown, and Members of the Committee, on behalf of the men and women that are operating the trains moving on our nation's railroads today, I want to thank you for giving us the opportunity to testify on our priorities for rail safety.

My name is James Stem. I serve in the capacity of Alternate National Legislative Director for the United Transportation Union with our office located here in Washington. I also have the assignment of coordinating our participation with the FRA Rail Safety Advisory Committee (RSAC) at the direction of UTU International President Paul Thompson.

We are FRA's partners working together to improve safety in our rail industry. We are thankful for the positive relationship that has been developed with Administrator Joe Boardman, Associate Administrator of Safety Jo Strang and their staff.

The most appropriate solutions to identified rail safety concerns are consensus results produced with FRA, labor, and rail management's active participation. With the FRA guidance, the RSAC process brings all the stake holders together to address specific concerns and to improve safety through practical application of the resolution.

UTU fully supports this FRA initiative and recognizes the fact that this process contributes to improved safety.

The Introduction of Secretary Mineta's FRA Action Plan states:

"The railroad industry's overall safety record has improved over the last decade and most safety trends are moving in the right direction. However, significant train accidents continue to occur, and the train accident rate has not shown substantive improvement in recent years. Moreover, recent train accidents have highlighted specific issues that need prompt government and industry attention..."[1]

While the numbers of "fender-benders"and minor incidents have decreased, the numbers of train collisions, train derailments, and major events in the rail industry have increased in number and frequency (FRA 11 year Accident Injury Summary).

FRA data reveals that over a three-year period ending in December 2005, train collisions increased by more than 42 percent and employee fatalities were up by 17 percent.

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[1] US DOT Federal Railroad Administration Action Plan for Addressing Critical Railroad Safety Issues, May 16, 2005

Moreover, the Washington Post reported a terrorist attack on rail cars carrying chlorine gas "could kill or injure tens of thousands." The New York Times reported railroads "transport more than 1.7 million shipments of hazmat every year, including 100,000 tank cars filled with toxic gases like chlorine and anhydrous ammonia." A White House homeland security adviser said, "Chemical transport is clearly the greatest vulnerability in the country today." Clearly, railroad safety is an urgent matter affecting public safety and national security.

Training

It is obvious to us this trend in declining rail safety is directly related to a failure in the current training programs and the rampant fatigue problems throughout the industry.

The lack of appropriate training is the number one safety issue facing the rail industry today – and it should be of significant and urgent concern to the Congress. These training deficiencies are not confined just to operating employees, but also include train dispatchers, signal employees, maintenance of way employees, locomotive repair and servicing employees, and track inspectors.

There was a time when trainmen and yardmen in freight and passenger service were naturals for becoming engineers. They possessed an impressive working knowledge of the physical characteristics of the terrain, in-train forces and operating rules and procedures. These veteran operating employees had only to become proficient in applying this knowledge to their new craft while, at the same time, honing their train handling skills. Unfortunately, this is no longer a reality.

As our aging workforce retires, and our railroad business increases dramatically, the railroads have delayed hiring replacements. As a result, they rush new hires through shortened, one-size-fits-all training programs. It is not uncommon on any train, anywhere in America, to find an inexperienced trainman paired with a new engineer. It is very unlikely the trainman received training over the territory he or she is working, or was taught the special problems that exist, and skills required, in regions with temperature extremes, heavy grades or complex operating environments. Most troubling is that it is unlikely either the new trainman or new engineer were provided classroom training where actual application of the operating rules was taught.

They needed only to memorize rules – not know how to apply them – in order to graduate. What's more, most veteran employees believe that recurrent training in the railroad industry has become a farce.

The UTU is of the strong opinion that newly hired trainmen should not be required to work unsupervised or operate locomotives until they are truly experienced in the trainman craft. This ensures they have become proficient in their train service and have gained needed on-the-job experience before assuming additional demanding duties and responsibilities.

A one year minimum in train service prior to becoming a conductor would improve the quality and competency of railroad operating employees, which equates to safer and more efficient operations.

It also ensures that newly hired employees will have approximately two years of practical railroad experience before they can be expected to operate locomotives without direct supervision.

The attraction and retention of qualified candidates for employment and their training is a major safety issue for all unions in the rail industry. Unfortunately, the rail carriers have attempted to make training of new employees an issue reserved exclusively for collective bargaining, where the carrier's only concern is the cost of the training. The large turnover in new railroad operating department employees has a direct relationship to the lack of experience and proper training in our industry. Many new employees express their frustration at being overwhelmed with the level of responsibility that they have received with poor training and little experience on the job.

Another FRA initiative, the Switching Operations Fatality Analysis (SOFA) found that training and experience were critical safety issues.

Our rail industry is absorbing a record number of new employees in every department while operating at maximum capacity because of the record levels of rail traffic. UTU has attempted to address the inadequate training issues in every forum, including the collective bargaining arena, with very little progress. The railroads have been reluctant to recognize that the adequacy of training is a genuine problem and have not addressed this issue with the unions in a meaningful manner. They have refused to even allow FRA to offer their expertise in training techniques, and have declined labor's offers to establish of cooperative mentoring programs for the critical component of "On the Job Training".

The rail industry will have more than 80,000 new employees in the next five years. Unless we can quickly eliminate training as the major safety issue, we can only expect this negative trend in safety analysis to accelerate.

Fatigue

Unless a human being knows in advance what time they must report to work, they can not arrange to be rested and fit for duty. The railroad industry functions on a 24/7 schedule with continuous operations from coast to coast. This is not an excuse for the current position of the railroads holding that their employees do not deserve and are not entitled to advance knowledge of the time they must appear for their next assignment. Every railroad terminal has an information line commonly referred to as a "lineup" that is intended to advise crews that are subject to call 24/7 regarding their status. Every railroad has "problems" with the accuracy of these "lineups". The employees must have early and reliable information indicating when they will be required to report for duty

Even though it is the same company officers, using the same company computers and programming that forecast the numbers of trains to be operated, the projected time on duty information available to railroad operating employees and reality are seldom even close. The data produced by these computers is frequently inaccurate by several hours. These are the same computers that the railroads are telling you will be used to operate 2 mile long freight trains with only one person on the train.

UTU has voluntarily participated in many different forums on Fatigue, Work Rest issues, and pilot projects designed to help stabilize the work schedules for operating crews. There are a few successful Work Rest projects continuing across the country, but these represent no more than 2% of the affected employees. Railroads have adopted unilateral Availability Policies that set arbitrary guidelines for employee work schedules. One railroad Availability Policy states that employees will be available for service 85% of their time. The average American worker that is expected to work 40 hours each week is available for service about 24% of their time. The railroads expect their employees to be available for work more than 3 times the national average.

The Federal Hours of Service Act states that rail employees involved with train operations and signal appliances can only work 12 consecutive hours on duty. In our rail industry today 20 consecutive hours between reporting for duty and being relieved is not unusual, with 14-16 hours on duty common place.

The rail industry is the only place in the United States where 12 hours on duty means 12 hours plus any additional time the railroad finds to be convenient. A court case pursued by the rail industry created a new definition of the time an employee can legally remain on duty, called "Limbo Time". The Supreme Court stated that Limbo Time was neither time on duty nor time off duty. The practical application of that Railroad victory in the Supreme Court means that the Hours of Service Law today is applied so that you stop the train at the expiration of your 12 hours, and then sit on the locomotive until it is convenient for the railroad to send someone out to bring you to a terminal. The employees sitting on the locomotive continue under pay, they are expected to protect the train against vandals or unauthorized movement, and are prohibited from leaving the train in almost every instance by the Operating Rules of the company.

When we hear the railroads discuss Fatigue, it becomes obvious that the top Executives of the industry actually know more than labor about the effects of fatigue on safety. On many occasions when confronted with direct questions about the safety concerns of fatigue, these executives have placed their hands over their mouths and exclaimed: "I am shocked to learn that there is gambling in this place!"

Before the Limbo Time ruling was implemented industry wide, 12 hours on duty actually meant 12 hours on duty for the operating crews. Rail management made the necessary arrangements to timely relieve the crews as required by the Hours of Service law and their operations were much more fluid because of those decisions.

When the Hours of Service Act was implemented for signal employees in 1976, it too was a 12 hour law. There is a provision in the Act to work signal employees up to an additional four hours "..when an 'actual emergency' exists and the work of the employee is related to the emergency." Railroads have slowly, but surely, expanded the criteria for an "actual emergency" so that almost all signal work is classified as an emergency. Signal employees routinely work 16 hour days. The 12 hour law has in effect mutated into a 16 hour law. This was never the intent nor should it be the application of the law.

To credit FRA, a Collision Analysis Working Group (CAWG) was created to analyze more than 50 main line train collisions, identify commonalities, and recommend changes to prevent future collisions. Rail management, the UTU, the Brotherhood of Locomotive Engineers and Trainmen (BLET), and the FRA were all equal partners in this exercise. This analysis obviously

showed a direct link to fatigue as a contributing factor in many of these collisions and the corresponding loss of situational awareness by the crews. The industry participated in the analysis as an equal partner. The industry also participated in drafting and approved the final language contained in the report as an equal partner, and afterwards demanded that their officers' names be stricken from the final report when senior management learned the involvement of fatigue was mentioned in connection with these collisions. I am thankful that FRA had the courage to remove the railroad officers' names from the report and published this significant work.

Fatigue in the industry has become a major safety concern because of the critical shortage of personnel in every department caused by intentional and ill founded hiring practices that were promulgated over labor's objections, together with implementation of the limbo time ruling. Cumulative Fatigue and the safety sensitive nature of the duties performed by railroad workers is an issue that might require Congressional intervention to resolve.

Track Safety

Human factors are also involved in the equation of track safety. The frequency of inspections, the techniques used in the inspections, and the training of the track inspectors are all critical elements of track safety.

The recent realization that insulated joints and conventional joints contained in Continuously Welded Rail territory were not being properly inspected and the inspection techniques used to examine joint bars for cracks are examples of this problem.

There are many new technologies that just cannot replace the eyes and experience of a qualified track safety inspector.

Another significant issue affecting track safety is the lack of appropriate manpower to keep the nation's rail infrastructure properly inspected and maintained. The Brotherhood of Maintenance of Way Employees Division (BMWED) of the Teamster's Rail Conference has lost significant numbers over the past several decades due to retirements, injury, and attrition. BMWED members are working shorthanded and their complaints about insufficient manpower continue to fall on deaf ears. As a result, the

nation's rail infrastructure is being maintained in a reactive, rather than a proactive mode.

Track caused derailments account for approximately 1/3 of all rail accidents, and this trend will continue to increase until manpower in the maintenance of way department is brought into line with the track miles they are expected to inspect and repair. Railroad safety is largely dependent on proper track maintenance and today's high volume, heavy tonnage trains require increased, rather than decreased, track maintenance. Thus, rail safety requires sufficient manpower in maintenance or way track forces to properly and proactively address current track deficiencies in our nation's rail infrastructure.

Hazardous Material Safety

In the past six years, the rail industry has suffered many catastrophic events involving hazardous materials. Not a single event occurred because of a failure of the tank car. Every catastrophic event occurred because of rail operational safety issues: train collisions, and track caused derailments.

It is good public policy to use the safest form of transportation to move our most dangerous cargos. Rail is the safest way to transport these products that our manufacturing processes, our needs for clean water, and our chosen way of life require.

While it is perfectly logical to want to strengthen the vessel containing the hazardous products, the safety of rail employees and the communities that we serve will be much better served by focusing our energies and our resources on correcting the causes of these latest events. Training of operating employees, fatigue of the operating crews, frequency of track inspections, requiring inspection of all track components, insuring that hazardous materials are properly positioned in the train, and providing accurate train consist information for the operating crews and dispatchers are the items that will offer improvements in the hazmat transportation.

The industry is required by law to have an accurate train consist to share with Emergency Responders in case of a derailment or other emergency. Automation has failed miserably in the rail industry with respect to the generation of accurate train consists. Every railroad operating in our country today has a problem with accurate train consist reports. We

appreciate that FRA is aggressively addressing this issue, however, the problem is ongoing and the situation is serious.

One railroad, probably the worst culprit in the accurate train consist debacle, actually removed the total axle count indication from their wayside defect detectors. Operating crews used this information as a method to check their train consist document for accuracy. Instead of solving the problem with the automated train consist information systems, this railroad elected to try to hide the truth from their crews and Emergency Responders. FRA intervened and this railroad indicated they would not continue to remove the axle counters from the defect detectors. Reports from the field, however, do not indicate that this feature has been restored on previously deactivated equipment.

Close Calls Pilot Project

The UTU, BLET, the Brotherhood of Railroad Signalmen (BRS), the rail carriers, the NTSB and the Bureau of Transportation Statistics (BTS) all participated in an FRA sponsored Close Calls working group to find new techniques and generate safety data that we do not have today. The experiences of the aviation industry and the rail industry in the United Kingdom served as a basis for this endeavor. This Close Calls steering committee now is in process of implementing the first pilot project in the rail industry on Union Pacific.

This concept asks each individual employee to self report events that do not result in a reportable accident, but could have major safety ramifications. The employee is exempt from discipline and retaliation by the company, and the system is strictly confidential.

UTU is proud to be a part of this program. We expect this Close Calls project to produce excellent results and to make a significant contribution to improved safety.

Single Person Operation

The rail industry is demanding from their employees and the Federal Railroad Administration the authority to operate trains with only one person on the locomotive. When this demand was first made during the current round of national negotiations, the industry first provided assurances and indicated that the safety of the operation could be

authorized with one person because of a pending development in Positive Train Control (PTC) systems.

When research revealed that system wide implementation of any PTC system was many years and many billions of dollars away, the carriers continued with their demands. One railroad even attempted to receive back door approval for such controversial operations by filing a Product Safety Plan with FRA that promoted single person operation with a waiver request for a second tier non-vital PTC overlay system.

Single person operation of freight trains involves a completely different analysis of the rail safety equation and a complete reassessment of the overall safety of operations that extends far beyond consideration of this specific issue. The responsibilities of the railroad to operate safely over public crossings, to inspect the moving train at every opportunity, to open public crossings quickly when stopped, and to interact with emergency responders are issues that are not addressed by any PTC system, and were not designed to do so.

A study of the data available on the FRA website indicates there were a total of more than 11,600 grade crossing collisions between 2002 and November 2005.[2] Single person operation also ignores more than 3,500 trespasser incidents from 2002 – November, 2005. Clearly, with more than 15,000 documented incidents occurring during the last four years an immediate response from the second operating crew member is essential to protect the safety of the public. Also, based on industry estimates 100 trespasser fatalities each year are ruled as suicides and would not be reflected in the FRA data.

Historically, each train has been considered as a self-contained operating unit that had the capability of moving safely in and out of terminals and sidings, and moving on main track utilizing a variety of train control systems and methodologies. Each train was able to set out defective cars en-route, to provide self inspection and repair for dragging equipment, shifted lading, hot journals, broken coupling devices, sticking brakes, and importantly, the ability to expeditiously open public grade crossings when necessary. Today, each operating crew is trained, equipped, and expected to make simple repairs and take other actions that ensure the safety of their train and the public. Each operating crew is also trained and equipped to interact with local emergency responders following a derailment, a grade crossing collision, a trespasser injury or fatality, and

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[2] 3077 (2002), 2975 (2003), 3067 (2004) and 2641 (January – November 2005)

the myriad of operational events that occur daily in over-the-road railroad train operations.

The railroad carriers who desire the authority to operate trains with a single individual are ignoring their responsibility for the safety of their employees, the local communities that they travel through, the local emergency responders, and the general public. PTC systems are not designed to reduce the numbers of hot journals on freight trains. PTC has no effect on reducing the numbers of grade crossing collisions or the striking of trespassers. PTC has no effect on burst air hoses, broken coupling devices, or shifted lading. PTC systems were not designed to interact with emergency responders following a derailment or a collision, or to open a public grade crossing to allow emergency vehicles and the general public to cross.

The current method of operation today addresses these identified safety requirements by having a qualified, trained employee at hand to provide immediate response to critical safety needs.

With single person operation, if one train sustains any operational failure (grade crossing collision, derailment, hot journal, broken coupling device, etc), then every other train on that route will be unable to open a grade crossing and will be able to make only limited reverse movements. The safety of the entire rail operation is compromised by the creation of this new concept of train movements that are not independent functioning units.

I am confident that most of the members of this Committee have been briefed on Single Person Operation by AAR and its railroad government affairs officers. UTU and other unions have also expressed our safety concerns about this attempt to compromise rail safety. We will keep you up to date on future developments with this controversial issue.

It is my understanding that the FRA has not determined that the safety of operations will not suffer as a result of the carriers' proposed rule changes and will continue to require reliance on traditional operation for safety reasons.

Whistleblower Protections

We must ensure that workers who report or identify a safety or security risk will not face retribution or retaliation from their employers. One should not have to choose between doing the right thing on safety or security at the

risk of losing his or her job. Despite the whistleblower protections included in the current law, rail workers and their unions continue to experience employer harassment and intimidation when reporting accidents, injuries and other safety concerns. Indeed, in an FRA report issued in July 2002 entitled *An Examination of Railroad Yard Workers Safety* (RR02-01), the FRA conducted focus group interviews with certain groups of rail workers. The FRA stated, "Perhaps of most significance, rail labor painted a generally adversarial picture of the safety climate in the rail industry. They felt that harassment and intimidation were commonplace, and were used to pressure employees to not report an injury, to cut corners and to work faster." It is disingenuous for rail carriers and government to ask workers to report problems while at the same time refuse to provide the basic protections needed to ensure that such reporting will not result in employer retribution.

Worker Security Training

Despite the claims of some in the industry, workers are not receiving meaningful security training. Workers still do not know what constitutes a security risk, though they are told to be "vigilant." They do not know how to respond when they see someone or something suspicious and they certainly do not know what to do if something actually happens. The Volpe Center recently concluded that "probably the most significant factor in determining whether a transportation employee makes a helpful or harmful decision during an emergency is training. Trained and alert transportation professionals can make the difference between success and disaster." Unfortunately, employers, under profit and operational pressures, too often short-change this critical security component. We have come to the conclusion that the only way workers are going to get the security training they need is for the federal government to come in and tell the carriers that they must offer this training because it is far too important to ignore. Rail carriers will claim that since training is already being done, government should allow industry to proceed on its own. Many front-line workers, however, dispute the industry's claims and we should not allow this fiction to perpetuate any longer.

I will be glad to try to offer an honest answer to any questions. We appreciate the opportunity to appear here today.

FRA 11 year Safety Statistics Attached